

Ernie Fletcher
Governor

LaJuana S. Wilcher
Secretary
Environmental and Public
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Environmental Quality Commission

Lindell Ormsbee, Chair, *Lexington*
Betsy Bennett, Vice-Chair, *Louisville*
Patty Wallace, *Louisa*
Gary Revlett, *Shelbyville*
Gordon Garner, *Prospect*
Eugene Zick, *Russellville*
Laura Knoth, *Grand Rivers*

MEMORANDUM

TO: Governor Ernie Fletcher
LaJuana Wilcher, Secretary Environmental and Public Protection Cabinet

FROM: Erik Siegel, Environmental Quality Commission

DATE: Friday, July 29, 2005

RE: Environmental Quality Commission Regulatory Recommendation

Attached is a regulatory recommendation passed by the Kentucky Environmental Quality Commission (EQC) at its public meeting held on July 27, 2005. The commission took action on the Kentucky Division of Water's proposed water withdrawal regulations. EQC recommended rejection of this regulation citing a failure to include provisions for both public notice and inter-agency notification/coordination.

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**RECOMMENDATION of the
KENTUCKY ENVIRONMENTAL QUALITY COMMISSION**

Pursuant to KRS 224.01-100 through 224.01-115, the Environmental Quality Commission shall have the power, duty and authority to:

Recommend adoption or rejection by a majority of its membership present and voting of any proposal by the cabinet to adopt, modify or revoke any rule or regulation pertaining to the prevention, abatement and control of existing or threatened air or water pollution, disposal of waste, control of noise, or the use of air, land, or water resources, or strip mining and reclamation. The Commission shall tender in writing, its recommendation of adoption or rejection. If the Cabinet adopts any matter upon the Commission's recommendation of rejection, the Secretary shall file with the Commission a statement of the reason therefore.

Therefore, on July 27, 2004:

The Environmental Quality Commission voted to recommend **rejection** of the Kentucky Division of Water proposed regulatory amendment: **401 KAR 4:010**. Water Withdrawal Permits.

This recommendation is based on the grounds that the Commission had specifically asked the Division of Water (DOW), at its May 26, 2005 meeting and in a subsequent resolution from the same meeting, to include a provision for public notice and interagency notification in the amendment and that DOW did not include such a provision. The Commission feels that public notice and interagency notification for water allocation permits, especially where those permits are issued years in advance of project construction, are necessary for proper decision-making.

Although the Commission understands the rationale that DOW used in deferring the issue of public notice to future rule making, it believes that this amendment is in fact the place for the inclusion of a public notice and interagency cooperation provision. The lack of provisions for public comment in other state run programs is not sufficient to exclude such a provision from this amendment. Additionally, DOW's argument that it is holding off on inclusion of a public notification provision because it is waiting for the development of better modeling tools for determining water withdrawal on a basin and inter-basin level is counter intuitive. The lack of modeling tools sufficient to characterize potential water withdrawal deficiencies during stress periods would seem to warrant an even greater need for public comment and interagency cooperation, not less. Furthermore, there is no guarantee that a provision for public comment and interagency cooperation will come into being solely due to an expectation that such a provision should exist or a future commitment to include such a provision. For this reason, this issue should have been included in the 401 KAR 4:010 amendments.